



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION No. 05-36

SUBJECT: EARL MITCHELL, CONSTABLE
CLARK COUNTY CONSTABLE, HENDERSON TOWNSHIP

A. JURISDICTION:

As elected Clark County Constable for the Henderson Township, Earl Mitchell is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 05-36 (Tab B)
- Reviewed subject's response received February 6, 2006 (Tab C)
- Reviewed *NCOE Opinion No. 96-39* (Tab D)

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(2), and
- NRS 281.481(7).

SPECIFIC REASON:

No allegations or credible evidence of any fact exists that amounts to or supports a potential violation by a public officer of the above provisions of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion, submitted by Ron Hilford, alleges violations of NRS 281.481(2) and NRS 281.481(7) by Clark County Constable for the Henderson Township Earl Mitchell (hereinafter "Mitchell"). The complaint alleges Mitchell violated the Ethics in Government law by:

- Intentionally structuring the operations of the Henderson Township Constable office so that Mitchell could be absent from daily operations and supervision of the office and could maintain his employment as full-time police officer while concurrently collecting a salary as Constable;
- Failing to disclose his salary and deluding the public regarding the nature of the responsibilities and operations of the Constable's office; and
- Committing embezzlement and receiving unjust enrichment by maintaining full-time employment and salary as a police officer, and at the same time, granting himself a full-time Constable salary.

E. SUMMARY OF SUBJECT'S RESPONSE:

In his response, Mitchell provided the following information:

- Mr. Hilford is a current candidate in the 2006 election cycle for the position of Clark County Constable Henderson Township; and
- Mr. Mitchell states, "As the 2006 campaign season has begun, it is my opinion that Mr. Hilford's complaint is his blatant example of a negative campaign tactic. As Mr. Hilford tries to compare the Henderson Township to Las Vegas Township, I submit the Henderson Township can not be compared to such. The Henderson Township Constable's salary is about \$2,300 a year and does not reflect a full-time position nor compares to the salary of the Las Vegas Township Constable at \$98,000 a year. In addition, the Henderson Township Constable's office does not have policies or procedures mandating the position of Constable as a full-time position." (sic)

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481

General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

* * * * *

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

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8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

NRS 258.060 Deputies.

1. All constables are authorized to appoint deputies, who shall have power to transact all official business appertaining to the offices to the same extent as their principals, but no person shall be appointed a deputy constable unless such person shall have been a resident of the State of Nevada for at least 6 months prior to the date of such appointment.

2. Constables shall be responsible for the compensation of their deputies, and shall be responsible on their official bonds for all official malfeasance or nonfeasance of the same. Bonds for the faithful performance of their official duties may be required of the deputies by the constables.

3. All appointments of deputies under the provisions of this section shall be in writing, and shall, together with the oath of office of the deputies, be filed and recorded in a book provided for that purpose in the office of the recorder of the county within which the constable legally holds and exercises his office. Revocations of such appointments shall also be filed and recorded as provided in this section. From the time of the filing of the appointments or revocations therein, persons shall be deemed to have notice of the same.

G. RESULTS OF INVESTIGATION:

This ethics complaint was filed by Ron Hilford, a candidate for the elected position of Clark County Constable Henderson Township. In the complaint, Mr. Hilford asserts the facts surrounding the complaint parallel those facts found *In the Matter of Bob Nolen*, NCOE Opinion No. 96-39 (see Tab D).

The *Nolen Opinion* involved the former Clark County Constable for the Las Vegas Township, Mr. Bob Nolen. In *Nolen*, the Commission on Ethics concluded Nolen willfully violated NRS 281.481(2) by structuring the operation of the Constable's office in a manner "so that his chronic absences would not affect the operation of the office." Despite such absences, Nolen continued to collect his full-time salary of \$63,000 per year. The Commission also found Nolen violated NRS 281.481(7) through his use of the Constable's office, equipment, materials, and personnel for his personal benefit.

As to NRS 281.481(2):

NRS 281.481(2) provides:

"A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason."

Mr. Hilford filed this complaint in conjunction with a complaint against Michael Mayberry, a retired Chief of Police for the Henderson Police Department. In the Mayberry complaint Mr. Hilford alleged that since Mitchell worked concurrently as a police officer and as Constable, Mayberry must have intentionally orchestrated a plan to somehow control both the Henderson Police Department and the Clark County Constable Henderson Township Office through his supervisory relationship with Earl Mitchell.

Here, Mr. Hilford alleges Mitchell's conduct is similar to that of Nolen, and Mitchell has used his position as Constable to secure unwarranted privileges and advantages for himself by intentionally structuring the operations of the Constable's office in such a way that Mitchell can be absent and still collect the Constable's salary.

In *Nolen*, the record showed the following:

- There were no statutes, regulations, or ordinances that required Nolen to keep any particular work hours;
- The Constable's office had a policy and procedure manual that provided that the Constable was to devote his full time and attention to the Constable's office;
- Nolen worked no more than 25 hours per week to as little as 5 to 10 hours per week;
- Nolen's activities bore little or no relation to his duties as Constable, such as babysitting his grandchildren, visiting the campaign offices of candidates for public office, conducting his own re-election campaign, and staying home due to poor health even though the Constable position did not allow for compensated sick leave;
- Nolen was seen drinking alcohol at bars during working hours against Constable policy;
- Nolen met deputies or other people to conduct Constable business during working hours at local bars, including a topless bar;
- Nolen answered calls received on the Constable's cellular telephone after consuming alcohol;
- Nolen created the position of Chief Deputy Constable and promoted someone into the position so that Nolen could delegate supervisory and managerial tasks previously done by Nolen or others in the office to the new position of Chief Deputy Constable;
- A deputy constable who was passed up for the new position of Chief Deputy Constable filed the ethics complaint against Nolen; and
- Nolen continuously collected his \$63,000 annual salary as Constable.

The voluminous documents submitted by Mr. Hilford with the ethics complaint provide the following information:

1. No statutes, regulations, or ordinances indicate a requirement that Constable Mitchell keep any particular or set employment hours;
2. No policy manual indicates a full-time employment requirement for the Constable position;

3. Hilford claims Mitchell told him Mitchell does not have to put in time on a regular basis at the Constable's office;
4. Hilford claims Mitchell told him Mitchell appointed a Chief Deputy who also happens to be a court bailiff;
5. Hilford provides news articles wherein Mitchell claims he works at the Constable's office on his lunch hour, on Fridays, and on weekends;
6. Hilford claims Fridays and weekends are not hours the Constable's office is open to the public;
7. Hilford claims Mitchell would have to work as Constable while wearing his police uniform, if Mitchell does indeed work as Constable on his lunch hour;
8. Hilford claims the Constable's web site does not provide Mitchell's cellular telephone number for the public;
9. Hilford claims Mitchell receives more than \$80,000 per year for serving as Constable; and
10. Hilford states he does intend to run for the office of Clark County Constable Henderson Township.

The threshold question in the request for opinion is whether Mitchell did, in fact, structure the operations of the Constable's office in a manner that would grant Mitchell an advantage such that he would not have to work yet could still receive his salary as Constable.

Hilford claims the office of Constable for Henderson Township is a full-time position. In *Nolen*, the Constable's office policy manual called for full-time devotion to the position. Here, Hilford has not produced a statute, rule, regulation, policy, or ordinance which requires Mitchell work as Constable on a full-time basis. Hilford provides no evidence regarding what hours Mitchell actually does work as Constable; rather, he merely inquired of the Henderson Police Department as to the regular work schedule of Mitchell as a police officer. Hilford speculates Mitchell has no time to devote to the Constable's office due to his police schedule and other personal and community commitments. Hilford provides no information regarding Mitchell's actual activities as Constable, and no evidence that Mitchell has neglected or in some manner not performed his duties as Constable.

In contrast, in *Nolen* the Commission had a dearth of information concerning Nolen's personal and/or inappropriate conduct during work hours – conduct which was unrelated to the office of Constable. The Commission opined the violation of NRS 281.481(2) was based on sufficient credible evidence Nolen's conduct was "...so blatant, egregious, and so licentious beyond what the public has a right to expect of a reasonable public servant." Here, Hilford fails to provide any evidence to support even a reasonable belief in his allegations.

In *Nolen*, Nolen's own deputy constable reported the office operations were structured in order to suit Nolen in his absence. In this case, Hilford provides no evidence nor even makes a valid argument as to how Mitchell may have machinated the Constable office

personnel and procedures so that he would not have to work. Hilford claims, “On November 6, 2005 Mr. Mitchell, at the conclusion of a Henderson Lodge meeting of the Fraternal Order of Police approached the complainant and initiated a conversation during which he pointed out another attendee, Roger Rogano as being his Chief Deputy.” (sic) Hilford claims Mr. Rogano is employed as a bailiff with the Clark County Court Department and, therefore, would not be able to supervise the Constable’s office during regular working hours. Hilford provides no statute, rule, regulation, policy, or ordinance which precludes Mr. Rogano from holding two separate positions in separate governmental entities, nor is Mr. Rogano the subject of this complaint.

In *Nolen*, the Commission on Ethics felt compelled to investigate and hold a hearing in the matter because of Nolen’s extraordinary machinations and apparent contempt for the public he served. One Commissioner stated the Commission would never see a clearer case of misuse of position. Regarding *Nolen*, the Commission opined:

“...a public official may not just ‘phone in’ his job as Mr. Nolen insisted he had a right to: the public has the right to expect that its well-paid elected officials will work assiduously in a dedication to their needs, not his. Mr. Nolen failed the public he served, misused his office for his own personal benefit by accepting a salary he did not earn, and we must say so.”

Hilford alleges Mitchell intentionally structured his office in a manner that affords him the ability to receive full-time pay without performing full-time work, and by failing to supervise his deputies, who, consequently, have become responsible for performing the duties of the Constable position. In raising the allegations, Hilford acknowledges there is no legal authority mandating a full-time commitment to the position of Constable. Furthermore, NRS 258.060 authorizes the appointment of deputies, who are thereby empowered to transact all official business of the Constable’s office. The faithful performance of the Constable’s duties, by the Constable or his deputies, is secured by a performance bond, and the Constable is responsible for the compensation of his deputies. Consequently, the allegations regarding Mitchell’s work hours and the structuring of his office do not present a cognizable, potential violation of Nevada’s Ethics in Government Law.

There simply is no evidentiary basis provided within the complaint to indicate Earl Mitchell inappropriately structured the Constable’s office for illicit advantage or benefit in a manner similar to *Nolen*. It appears Hilford used the Commission’s opinion in *Nolen* to launch allegations against Mitchell, hoping such allegations might stick; however, the facts and circumstances presented within the complaint are not analogous. The allegations of Mr. Hilford appear frivolous, they are without merit, and they have absolutely no factual basis.

As to NRS 281.481(7):

NRS 281.481(7) provides:

“A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.”

Mr. Hilford alleges Mitchell violated NRS 281.481(7) by using governmental time, property, equipment or other facility to benefit his personal and financial interest. The voluminous materials submitted with the complaint fail to explain or substantiate how Mitchell might have even attempted to do so.

In *Nolen*, the Commission found Nolen willfully violated NRS 281.481(7) based on both his and a colleague’s admission that the Constable’s office cellular telephone, fax, personnel, and personal calendar were used to conduct activities related to Nolen’s re-election campaign. Here, Hilford fails to provide any evidence of similar conduct, or any other conduct which might violate Nevada’s Ethics in Government Law. Again, the allegations of Mr. Hilford appear frivolous, they are without merit, and they have absolutely no factual basis.

While the Executive Director does have authority to conduct investigations relating to complaints received by the Commission, that authority does not contemplate undertaking an investigation to determine the possible existence of an ethics violation when the complaint fails to provide any factual basis whatsoever to support any potential alleged violation of Nevada’s Ethics in Government Law.

The Executive Director finds insufficient evidence was submitted by the requestor to create even a reasonable belief in the allegations set forth within the complaint. Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Mr. Mitchell violated the provisions of NRS 281.481(2) or NRS 281.481(7).

H. CONCLUSION:

The Executive Director hereby recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations the subject violated NRS 281.481(2) or NRS 281.481(7), and further that the allegations be dismissed.

DATED: March 13, 2006

Stacy M. Woodbury
STACY M. WOODBURY, MPA
EXECUTIVE DIRECTOR